

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

GOLDEN BETHUNE-HILL, *et al.*,

Plaintiffs,

v.

VIRGINIA STATE BOARD OF ELECTIONS,
et al.,

Defendants,

v.

VIRGINIA HOUSE OF DELEGATES, *et al.*,

Intervenor-Defendants

Civil Action No. 3:14-cv-00852-REP-AWA-BMK

**PLAINTIFFS' REPLY IN SUPPORT OF SUPPLEMENTAL SUBMISSION
REGARDING REVISED SECOND MOTION FOR ATTORNEYS' FEES AND
LITIGATION EXPENSES**

By Order dated April 20, 2020, the Court ordered Plaintiffs to “file a truncated fee award calculation using Richmond, Virginia rates, with supporting affidavit and exhibits, if needed, by May 1, 2020.” ECF No. 423. The supplemental briefing and affidavits provided additional information concerning Plaintiffs’ requested rates in 2017, 2018, and 2019.

On May 8, 2020, Plaintiffs submitted a supplemental brief in support of their requested 2017-2019 rates, supported by three affidavits establishing the reasonableness of the rates sought. On May 22, 2020, the State Defendants and Intervenor-Defendants (“Intervenors”) submitted their responses. Intervenors expressly concede the reasonableness of Plaintiffs’ 2017-2019 rates, although they maintain their position that fees cannot be awarded against them given their status as Intervenors. ECF No. 428. The State Defendants indicate they “have no further response.” ECF No. 427.

Although the State Defendants offer no response to Plaintiffs’ supplemental brief, the State Defendants do maintain that the Court should award no more than \$3,265,879.86 in fees and expenses. *Id.* This is the same position the State Defendants took in their initial response to Plaintiffs’ fee petition. *See* ECF No. 405 at 14. Part of the basis, however, for the State Defendants’ calculation was their position that Plaintiffs had not adequately supported requested rates for 2017-2019. *Id.* at 7-9. Specifically, the State Defendants asked the Court to reduce Plaintiffs’ fee request by \$297,032.80 on the strength of their objection to the requested 2017-2019 rates. *Id.* at 9, 14.

Plaintiffs have now submitted further evidence supporting their 2017-2019 rates, which the State Defendants have not disputed or called into question. It is well-established that where a party does not respond to an argument in a motion or opposition brief, it concedes the point. *See, e.g., Burke v. CHS Middle E., LLC*, 1:18-CV-01605-LO-JFA, 2019 WL 459022, at *5 (E.D. Va. Feb. 4, 2019). Accordingly, as neither the State Defendants nor Intervenors now question Plaintiffs’

requested rates, by the State Defendants' own calculations, the Court should award no less than \$3,562,912.66 (\$3,265,879.86 plus \$297,032.80).

This leaves remaining for resolution the State Defendants' and Intervenors' other objections to Plaintiffs' request for combined fees, expenses, and costs of \$4,828,822.16. For the reasons Plaintiffs explained in their initial motion (ECF No. 388) and replies (ECF No. 416 & 420), the other bases offered in opposition to Plaintiffs' fee request lack merit. Plaintiffs therefore respectfully ask the Court to award Plaintiffs the requested sum of \$4,828,822.16 in combined fees, expenses, and costs. Plaintiffs believe the Court could allocate a portion of this fee award to Intervenors in its discretion, and continue to take no position on whether the Court should do so.

DATED: May 29, 2020

By: /s/ Aria C. Branch

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CERTIFICATE OF SERVICE

I hereby certify that on the 29th day of May, 2020, I filed the foregoing with the Clerk of Court using the CM/ECF system, which will then send a notification of such filing to the counsel of record in this case.

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